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The European Union Citizenship and the social benefits of European Union Citizens in other Member States

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A thesis submitted for the degree of

***LLM in Transnational and European Commercial Law, Mediation, Arbitration
and Energy Law***

February 2018

Thessaloniki – Greece

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February 2018
Thessaloniki - Greece

Abstract

This dissertation was written as part of the LLM in *Transnational and European Commercial Law, Mediation, Arbitration and Energy Law* at the International Hellenic University.

This dissertation begins with the presentation of the general concept of European Union citizenship along with some historical data. Emphasis is given to the legal basis of the European citizenship and its connection with national citizenship, along with some important case law. The freedom of movement within the territory of the European Member States and the Directive 2004/38/EC is another part of this thesis.

Additionally, this dissertation presents some of the main social benefits that European Union citizens can claim during their residence or their travelling along other Member States, the prerequisites to claim these benefits and some important case law which has to do with the phenomenon of "benefit tourism" or "welfare tourism" and how the European Court of Justice (ECJ) dealt with it, because it has been a "hot topic" timely.

In addition, there is a quick but inclusive reference to the Brexit, meaning the United Kingdom's exit from the European Union, David Cameron's demands, how it will affect people and Europe in general and all the current updates of what is occurring in Europe because of Brexit.

Finally, I want to thank my supervisor, Professor Mr. Thomas Papadopoulos for his kind assistance and guidance with my dissertation. His lectures inspired me to choose this subject for my dissertation and his instructions were very helpful and organized, always willing to help me and guide me.

Anastasia Mavridou
30/1/2018

Preface

During my studies at the IHU, I was inspired by the course of European Economic Law and thus I selected the issue of my thesis. Writing my dissertation was a new experience and a challenge to me. European situation is constantly a "hot topic" and things in Europe change by time to time. My supervisor Prof. Thomas Papadopoulos helped me a lot with the guidelines and the motivation he gave me. His innovative way of lecturing inspired me to contact him and ask for his help and guidance regarding my thesis. I searched mainly in the IHU databases for journals and articles related to European Citizenship and social benefits in other Member States, the internet in general and I also made an investigation in IHU's library. All in all, writing my dissertation was the best way and the most beautiful ending of this amazing year of studies in IHU.

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Introduction-The European Citizenship

Any person who holds the nationality of a European Union Member State is automatically a European Union citizen. We understand the concept of citizenship as a general "right to have rights" and this is mostly the idea we have for European Union citizenship as well. Citizenship has always been associated with rights. As Igor Štiks and Jo Shaw in *"Citizenship Rights: Statuses, Challenges and Struggles"* write, "in order to understand how the different components of citizenship – including citizenship rights – actually interact with each other within a given social, political, economic and international context, we use the term *citizenship regime*" and continue "More precisely, a citizenship regime is based on a given country's citizenship legislation defining the body of citizens (i.e. who is entitled to citizenship and all duties and rights attached to that status), on administrative policies in dealing with citizenship matters and the status of individuals (citizens and non-citizens alike), and, finally, on the official or non-official dynamic of political participation, inclusion and exclusion".¹ The aspects of citizenship are multiple and some areas related to citizenship are for example democratic rights and freedoms, social rights, health benefits, economic rights etc.

Of course, citizenship is not only connected with rights, as we may think, but it also puts some duties on the citizens, such as paying taxes that and obeying the law. In addition, there are some countries where an additional duty may appear, such as the duty to vote or the duty to take part in trial processes.

When it comes to European Union citizenship, in the early years after the Second World War, several people envisaged a Europe of peace, recovery and brotherhood, but still there was not a term like citizenship. Robert Schuman, one of the "founders" of the EU, tried in several different ways to achieve a cooperation with other war destroyed states. Later, Jean Monnet's plan to mitigate disputes over coal and steel, enabled Schuman to announce the plan for cooperation on the 9 May 1950. But even at this great devastation, not all political leaders could agree. Therefore only six States agreed on the co-operative plan. The Treaty of Maastricht is the one that established it but the aim of this establishment was of course not to replace national citizenship. As S. Besson and A. Utzinger, in *"Towards European Citizenship,"* refers, "citizenship in Europe has become multilevelled as European citizens are members of different polities both horizontally across Europe (other Member States) and vertically .

The concept of European citizenship appeared for the first time in the Maastricht Treaty which was signed on 7 February 1992 but due to some ratification hindrances, it came into force on 1st November 1993. At first, citizenship of the EU meant little more than free movement of workers, but as the time went by, co-ordination and judgments in the Court of Justice allowed the citizenship of the EU to get more important meaning, another legal status, based in citizenship in a Member State of the Union,

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Igor Štiks and Jo Shaw *"Citizenship Rights: Statuses, Challenges and Struggles"*, (a lightly revised version of a part of the introductory text for the anthology *Citizenship Rights*, ed. Jo Shaw and Igor Štiks, Ashgate, 2013), no. 6, pp. 73-90.

therefore containing two different sources of rights, contradictory in scope. In the following two decades the meaning of EU citizenship was enlarged in court cases but limited through the comments from Member States and more definitively through art.51 of the Charter of Fundamental Rights, which came into effect with the Treaty of Lisbon in 2009. That provision protects the political sovereignty of the Member States by restricting the competence of the Union only to rights originating exclusively from the treaties and implementing legislation. Member States ensure that the Union does not infringe on the rights of Member States, but Member States do not impose on themselves the duty to extend internal rights, even the right of continued residence, to non-EU residents. Article 51 thus includes the "battling" concepts in the scope of citizenship.²

Union citizenship "adds a European dimension to each national citizenship and, to a certain extent, alters national citizenship in reconceptualizing it in a complementary relation to other Member States' citizenships".³ I believe that it is very important to stress that the general concept and the implications of the citizenship of the European Union do not stop at the borders of the European Union Member States, mainly because of the different rules and laws for the acquisition of the citizenship that each Member State has to apply and as it is logical these rules and laws affect different groups of third party nationals unevenly. What is more, these effects are not experienced equally from everyone even within the territory of the European Union.

²Elsbeth Guild, Cristina J. Gortázar Rotaeché, Dora Kostakopoulou (eds)

Reviewed by Catherine McCauliff, "*The reconceptualization of European Union Citizenship*", *European Law Review* [2016].

³S. Besson and A. Utzinger, "*Towards European Citizenship*," [2008] *The Journal of Social Philosophy* 185 at 196; see also G. Delanty, "*European Citizenship: A Critical Reassessment*," (2007) 11 *Citizenship Studies* 63 and N. Walker, "*Denizenship and Deterritorialisation in the European Union*," in H. Lindahl (ed.), *A Right to Inclusion and Exclusion*, (Oxford, Hart Publishing, 2009) 261

The Legal Basis of the Citizenship and the rights that derive from it

The importance of the provisions of the Treaty of Maastricht might be regarded as the first stage of integration in the Community legislation.

To begin with, we have the preamble of the Treaty on European Union (TEU) which gives the nationals of Member States a common citizenship. Article 2 of the Treaty includes provisions that refer to the aims of the EU and stresses its objectives as being to ensure the 'protection of the rights and interests of nationals.' In part two, provisions of the TEU set the constitutional foundation of the citizenship. In addition, the legal basis of the Union Citizenship derives from articles 9-12 TEU. According to article 9 TEU and article 20 TFEU, every person holding the nationality of a Member State is a citizen of the Union. The existence of a right of free movement has been the primary focus of the interpretation given by the CJEU to this provision since the *Baumbast* case where the Court held that this provision was directly effective and could be relied upon in national courts against the national authorities. Article 20(2) TFEU shows that the starting point is that all EU citizens must benefit from EU free movement: "Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia: (a) the right to move and reside freely within the territory of the Member States..." The existence of a right of free movement has been the first aim of the interpretation given by the CJEU to this provision since the *Baumbast*⁴ case where the Court stated that this provision was directly effective and could be used in national courts against the national authorities.⁵ European Union citizenship comprises a number of rights and duties, additionally to those deriving from the citizenship of a single Member State.

What is more, the real substance of the citizenship lies in articles 18-24 TFEU. More explicitly, European Union citizenship gives to every person who normally and lawfully obtains it, a catalogue of rights.

I begin with Article 18 TFEU, which states that any discrimination on the ground of nationality is prohibited. This is without prejudice to any special provisions of the Treaties providing otherwise. The usual legislative procedure is used for application of measures under this Article. Under Article 19 TFEU, discrimination based on sex, racial or ethnic origin, religion, belief, disability, age or sexual orientation is strictly prohibited. This is without prejudice to other provisions of the Treaties providing otherwise. Afterwards, Article 21 TFEU gives the right to free movement and residence within the territory of the Member States. The article is directly effective (Case C-413/99 *Baumbast*) and gives some important social welfare, cultural and other rights on EU citizens because of their holding their EU citizenship (Case C-85/96 *Maria Martínez Sala*; Case C-209/03 *Bidar*; Case C-258/04 *Ioannidis*, Case C-148/02 *García Avello*; Case C-200/02 *Chen*). The most important secondary legislation implementing what is now Article 21 TFEU is Directive 2004/38/EC of 29 April 2004 on the Right of

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Case C-413/99 *Baumbast and R v Secretary of State for the Home Department* [2002]

⁵Jo Shaw "Getting to grips with EU citizenship", The University of Edinburgh, [2013] p.4

Citizens and their Family Members to Move and Reside Freely within the Territory of the Member States.

Article 22 par.1 TFEU, confers the right to vote and stand for municipal elections in a host Member State, under the same conditions as nationals of that Member State. Article 22 par.2 TFEU confers passive and active voting rights in a host Member State for elections to the European Parliament. Article 23 TFEU confers on every citizen of the EU the right to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State, in the territory of a third country in which the Member State of which the EU citizen is a national is not represented. This right is confirmed in Article 46 of the Charter of Fundamental Rights of the European Union. Article 24(1) TFEU arranges the whole procedure for the application of the right conferred on EU citizens included in Article 11 TEU to request the European Commission to bring forward legislative proposals in areas where the Commission has the authority to do so. Article 24 par.2 TFEU confers the right to petition the EP. Article 24 par.3 TFEU confers the right to submit complaints to the Ombudsman. Article 24 par.4 TFEU confers the right to use one's own language in correspondence with EU institutions, bodies, offices and agencies.⁶

⁶Prof. Thomas Papadopoulos slides for the lectures of IHU, EEL 1

The free movement in European Union and Directive 2004/38/EC

In this chapter, I would like to make a quick but inclusive reference to the right of free movement within the territory of the Member States, as well as to the Directive 2004/38/EC, which refers to the free movement. Article 21 par.1 TFEU gives all European Union citizens and their families the right to move freely and reside within the territory of the Member States with the prerequisite that they are active in the internal market economic activity and/or are financially self-sufficient. The ECJ has broadly interpreted Article 18 par.1 EC [nowadays Article 21 par.1 TFEU] to the extent that it is now first, *directly effective* and second, a source of rights that can be relied upon by EU citizens because they are citizens of the Union. Although at the beginning the ECJ was a little hesitant, it has made wide use of Article 18 par.1 EC [Article 21 par.1 TFEU], although it is well established that there is no need to test the applicability of Article 21 par.1 TFEU if other, more specific articles of the Treaties are applicable, for example, Articles 49 or 45 TFEU, unless they only cover some fields and not the whole matter. In *Case C-413/99 Baumbast and R v Secretary of State for the Home Department*, the ECJ for the first time explicitly recognised that Article 18 par.1 EC is directly effective. Until this judgment the direct effect was not clear.

The appropriate legal framework (Directive 2004/38/EC) became applicable for all EU countries on 30 April 2006. The Directive aimed to make more simple and at the same time to strengthen the right of free movement and residence for all EU citizens and their family members. It analyzes in a comprehensive way the rights guaranteed under Article 21 par.1 TFEU and their scope, it describes administrative procedures regarding the obtainment of the residence documents in a host Member State and of course it defines the rights of family members of EU citizens. The Directive defines that the right of free movement is offered to the citizens of the European Economic Area (EEA), which includes the member states of the European Union (EU) and the three European Free Trade Association (EFTA) members Iceland, Norway and Liechtenstein. Switzerland, which is a member of EFTA but not of the EEA, is not bound by the Directive but rather has a separate bilateral agreement on free movement with the EU. Although I am not going to fully analyze the Directive, I think it is essential to make a reference to the fact that in order to be fully covered by the European right of free movement, the EEA citizen needs to use one of the four treaty rights: working as an employee (this includes looking for work for a reasonable amount of time), working as a self-employed person, studying, being self-sufficient or retired.

Moreover, another important part that I will analyze afterwards is Article 24 of Directive, with the title "*Equal treatment*" which states that: "1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence. 2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant

maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families."I will further analyze its importance afterwards.

The connection between national citizenship and Union citizenship and some important case law

It is generally acceptable that in the European Union, the foundation of citizenship lies at the national level. The citizenship of the European Union was introduced by the Treaty of Maastricht in 1993 and it was rather restricted in its personal scope according to the national citizenship legislation of the Member States. As article 9 of the TEU states, "In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship". Although there is a variety of opinions when it comes to the importance of the national citizenship nowadays, the European Union's concept of multilevel citizenship has promoted the value and the importance of having the citizenship of one of the Member States, in comparison to having the citizenship of a third country (or indeed of a candidate state). The Court's case law has few decisions referring to the national citizenship, but indirectly, it has strengthened the "alternative reference point of residence" at least for those EU citizens who reside in other Member States, by widening access to some particular benefits, allowances and entitlements (access depending on residence) and by imposing limitations on the exercise of national competences opposite to mobile EU citizens in some areas. It has also allowed the portability outside the national jurisdiction of some of the benefits and entitlements, in order not to "punish" somehow the EU citizens for using their free movement rights. Even so, I have to stress at this point that the Member States are not yet under control regarding the regulation of the acquisition and the loss of national citizenship.⁷

In addition, article 20 TFEU repeats the same point as mentioned above, citing that "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship".

There are also some important cases referring to this issue. The first one is the *Case C-369/90 Michelletti*, even before the introduction of the European Union citizenship. Michelletti had double nationality, Argentinian and Italian and he was denied the registration as a dentist in Spain because the Spanish Civil Law regarded him to be an Argentinian national therefore omitting his inactive Italian nationality, the Court ruled that "while determination of nationality falls within the exclusive competence of the Member States, this competence must be exercised with due regard to the requirements of Community law".⁸ The Spanish administration denied his request because, following the laws of the Spanish legislation regarding a person with more than one nationalities, he was considered to be a national of Argentina.⁹ The

⁷Neil Walker, Jo Shaw, Stephen Tierney, "Europe's constitutional Mosaic" (chapter II, a), Hart Publishing, [2011]

⁸Dora Kostakopoulou, "When EU citizens become foreigners", *The European Law Journal*, Vol. 20, No. 4, [July 2014] pp. 447-463

⁹Hans Ulrich Jessurun d'Oliveira, 'Case C-369/90' *M. V. Micheletti and others v. Delegacion del Gobierno en Cantabria*, "Judgment of 7 July 1992, *Common Market Law Review* [1993] Vol. 30, Issue 3, pp. 623-637

Court decided that Spain had to accept that Mario Michelletti was to be regarded as an Italian for Community purposes because of the Italian interpretation of the content of the Italian-Argentinian treaty on double citizenship, which was in fact a copy of the Spanish-Argentinian treaty on double citizenship. Furthermore, the European Court of Justice stressed the importance of respecting the Community law when regulating or interpreting the nationality law of the State involved. "The definition of the conditions of acquisition and loss of nationality is, in conformity with international law, within the competence of each Member State, which competence must be exercised with due regard to Community law." ¹⁰After the Treaty of Maastricht, this means that Member States must recognise the Union citizenship of nationals of other Member States also maintaining the nationality of a third state. The importance of the decision, finally, lies on the fact that the ECJ clearly maintained the key foundations of international law: Member States have exclusive right to determine nationality. This decision opened the road for the integration of EU citizenship.

Second important decision on our issue was the *Case C-192/99 Kaur*. Here, the ECJ decided that the United Kingdom was free to refuse to give full British nationality to one of its citizens who acquired a special type of legal status, mainly because these rules were among the 'conditions of accession' of the UK to the Communities in 1973. In addition, the UK's announcement for this purpose, did not deny anyone rights to which that person could claim under Community law. The result was that such rights were never created initially for persons like the persons described above. Therefore, in order to finally determine who was a national of the UK, mostly aiming at determining the scope of the Treaty *ratione personae*, it was important to make a reference to the 1972 and 1982 declarations made by the UK and appended to the treaties, stating which persons it regarded as its citizens for the purposes of the application of EU law, although these declarations are not generally considered to have the same strength as the EU Treaties.

In *Case C-200/02 Chen*, it was decided that Article 18 of the EC Treaty, which refers to the right of every citizen of the Union to move and reside freely within the territory of the Member States of the EU, and Directive 90/364, relating to the right of residence, bestow on a minor who is a national of a Member State, is covered by adequate sickness insurance and is under the care of a parent who is a third-country national, having sufficient finances for that minor in order not to become an additional "load" on the public finances of the host Member State, the right to reside for an undefined period in that State. In such situations, those same provisions allow a parent who is the one who cares for that minor, to reside with the child in the host Member State.

Finally, the conclusion is that all these previous cases ruled that a Member State has exclusive competence to decide who its nationals are and its decision must be respected by other Member States. But this fact is subject to a provision that when a situation under investigation is within the scope of the EU Treaties, Member States must be attached and strictly follow the EU law. This ruling has its foundation at the *Case C-135/08 Janko Rottmann*. Rottmann was an Austrian citizen who had obtained the German nationality through naturalisation proceedings and conforming to the Austrian legislation, he would lose his nationality of origin in an automatic way. But what happened is that the German authorities later found that Rottmann had left out

¹⁰Gerard- Rene de Groot, "Towards a European Nationality Law", Maastricht University, vol. 8.3 2004. ECJL

the fact of being seriously involved in criminal proceedings, before this situation was created (meaning the acquiring of the German nationality etc). And not only was he involved in criminal proceedings but there was also an arrest warrant aiming at him. Due to this impediment, the German authorities decided immediately to withdraw the German naturalisation with retroactive effect also, for the reason that the applicant (Rottmann) had "gained" German nationality by deception. Since these proceedings would lead to the loss of the German nationality and, therefore, the citizen of the Union status as well, leaving Rottmann stateless, the only thing remaining for him to do, was to challenge the decision.

The Court held that "Unlike the applicant in the case giving rise to the judgment in *Kaur* who, not meeting the definition of a national of the United Kingdom of Great Britain and Northern Ireland, could not be deprived of the rights deriving from the status of citizen of the Union, Dr Rottmann has held Austrian and then German nationality and has, in consequence, enjoyed that status and the rights attaching thereto"¹¹. Consequently, the ECJ considered that, according to international law, it is within the competence of Member States to establish the conditions and the prerequisites for the acquisition or the loss of nationality. The ECJ stated that EU law is not opposite to a decision of removal of nationality for the reasons of fraud, when it was gained by the way of naturalisation, as long as this decision has gone through the proportionality test when it comes to the consequences and the effects in terms of EU law.

What we can derive, is that while the case concerned the loss of EU citizenship, we cannot conclude necessarily that EU law has nothing to do with its acquisition. While *Kaur* case did concern the acquisition of nationality, *Rottmann* indicate that prima facie EU law does not impose very strict limits on Member States' nationality laws.

¹¹Stefania Bariatti "Cases and Materials on EU Private International Law" Hart Publishing, [2011] page 245.

The social benefits of European Citizens in other Member States

In this chapter I will examine in detail the social benefits of European Union citizens in other EU Member states along with some recent and important case law of the ECJ.

Types of social benefits

First of all I want to make clear what categories of social benefits are available for someone to claim. These are:

1) *Social security benefits*. These are mainly contributory benefits (paid in return for contributions) such as benefits for sickness, maternity/paternity, job-related accidents and unemployment benefits and pensions. These benefits also contain universal benefits such as family benefits. The regulation regarding these benefits for mobile EU citizens is n° 883/2004.

2) *Social assistance benefits* – non-contributory benefits (paid with no contribution requirements), dependent on applicants' needs. These benefits are "subsistence benefits" and they include benefits paid to cover the least living cost or assistance paid for special circumstances. The rules regarding the prerequisites for these benefits for mobile EU citizens are placed in the Directive 2004/38/CE.

3) *Special non-contributory cash benefits (SNCBs)* – mixed benefits, between social security and social assistance. The purpose of the establishment of these benefits is to give "supplementary, substitute or ancillary cover against the risks covered by the branches of social security [...] and to guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned". These benefits are enacted with Article 70 of Regulation (CE) n° 883/2004. At the Annex X of this Regulation, each one of the Member states listed the benefits which under their legislation match the criteria defined in Article 70.¹²

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Sofia Fernandes, "Access to social benefits for EU mobile citizens: "tourism" or myth?", Notre Europe, Jacques Delors Institute, policy paper 168, [2016]

Access to social benefits-Employment and family

It is true that the access to social benefits and welfare systems is different by country to country, and each Member State has the responsibility to organize its system. Some Member States have been implementing reforms to their legislation since the 2000s so that they put some restrictions to mobile EU citizens regarding their use of the benefits.

When it comes to **non nationals EU workers**, the coordination of Member States' social security systems – provided for in Regulations 883/2004 and 987/2009²⁰ - is "at the heart of citizens' mobility within the EU". This coordination makes sure that mobile EU citizens stay covered by a social security system and they do not lose entitlements and rights they got in their country of origin once they decide to move and live in another Member State. According to European provisions, European citizens and their dependants are covered by the social security system in the country where they work, once they start to participate to its financing with their social security contributions and taxes. However, regulations (EC) n° 883/2004 and n° 987/2009 only concern social security benefits and special non-contributory cash benefits (SNCB). Social assistance benefits (non-contributory) are covered by the Directive 2004/38/CE. Under the *equal treatment* principle which is enacted by article 24 of this Directive, EU workers (employees or self-employed) enjoy the right to social assistance benefits under the same conditions as nationals of that Member state.¹³ The principle of *equal treatment*¹⁴, when it comes to the workplace, includes: salaries and other employment and working conditions, health and security at work, access to training, schools and retraining centres – for the worker and his/her children, access to housing, meaning social housing or access to home ownership, the right to become member of a trade union, social and tax advantages, recovery after getting dismissed from work and re-employment. It may also contain advantages such as discounts to train fares or other transportation fares, educational financial awards, or unemployment benefits for the claimant's children when they are looking for their first job. It is important to underline that European legislation makes a provision for EU citizens who become involuntarily unemployed after having employment in the host country for more than one year - and who have registered as jobseekers with the appropriate employment authority - to uphold their status of worker. Those who get unintentionally unemployed before completing a year of work keep their status of worker for at least six months (Article 7 par.3 of Directive 2004/38/EC). This status of worker means that they are not

¹³Sofia Fernandes, "Access to social benefits for EU mobile citizens: "tourism" or myth?", Notre Europe, Jacques Delors Institute, policy paper 168, [2016]

¹⁴The principle of equal treatment has been said to be "at the heart of European citizenship" by Advocate General Poiares Maduro at par.18 of the opinion in case C-524/06 *Huber* [2008] ECR I-9705 and it has been noted by Leonard FM Besselink in Case note on *Eman and Sevinger v. Netherlands* (2008) 45 *Common Market Law Review* 787 at 805: "(T)he exclusion of a Member States own nationals must not be discriminatory as the Court of Justice in case C-300/04 *Eman and Sevinger v. Netherlands* [2006] ECR I-8055] found was the case with the Netherlands electoral law in question. This is a considerable EU law restriction on the freedom of Member States to withhold political rights from their own nationals.

considered to be inactive and the conditions of sufficient resources do not apply to them.¹⁵ Mobile workers' access to social benefits is naturally a simpler issue than access for inactive citizens. In spite of this, the issue of EU workers' access to in-work non-contributory benefits was hotly debated. Direct access to these benefits for EU workers (who have never previously given anything to the welfare state) could influence mobile citizens. This was a hot topic especially in the UK, where these in-work benefits are important. According to these claims, these citizens would select the United Kingdom as a host country, believing that social benefits would increase their low incomes. However, as Frank Vandembroucke stresses, although in-work non-contributory benefits are significant in the United Kingdom – particularly for couples with children – another factor must be taken into account, namely that the UK has the lowest minimum wage out of other EU countries, with the exception of Greece, Portugal and some more. Therefore, if we compare the income of a couple, when one of them is employed full-time on minimum wage, with two children, we conclude that this income is higher in Luxembourg, Ireland, Austria and Finland than in the UK. As Frank Vandembroucke concludes, "so conceived, the UK is not an exceptional 'welfare magnet'"¹⁶

When it comes to **economically inactive citizens**, the Regulation concerning the coordination of social security systems states that economically inactive citizens are covered by the social security system in their country of residence, as long as tests of *habitual residence* prove that they have a real link with the host country. From the list of social security benefits, inactive EU citizens can only claim universal benefits (such as family benefits), as they are restricted from contributory benefits. The issue of inactive citizens' access to non-contributory benefits and to SNCB is exactly the main concern in "benefit tourism". ["Benefit tourism" is a rather political term which first appeared in the 1990s and later used for the threat that a huge number of citizens from eight of the ten new members of the European Union (in the 2004 enlargement of the European Union) would move to the already existing member states, in order to take advantage of their social welfare systems rather than to work, using the justification of work seeking as a fake purpose. This threat was in many countries used as a ground for enacting temporary work or benefit restrictions for citizens from the eight new member states.¹⁷] Indeed, these citizens benefit from the equal treatment principle and can thus claim some social benefits, without ever having spent money to the financing of the country's welfare state. However, in order to protect host Member States from an unreasonable financial burden and to limit the welfare tourism within the EU, European legislation provides for a deviation of the principle of equal treatment: Member States are not obliged to provide non-contributory social assistance benefits to economically inactive European citizens for the first *three months* of their residence (article 24 par.2 of Directive 2004/38/EC). Following residence of three months, the principle of equal treatment can be invoked, although, what usually happens is that inactive EU citizens are not able to claim social assistance benefits for the first *five years* of residence. Thus, in order to reside in the host Member

¹⁵Sofia Fernandes, "Access to social benefits for EU mobile citizens: "tourism" or myth?", Notre Europe, Jacques Delors Institute, policy paper 168, [2016]

¹⁶ Frank Vandembroucke, "Social benefits and cross-border mobility", Tribune, Jacques Delors Institute, [June 2016]

¹⁷Tom Huppold, "UK set to act against benefit tourism", The Guardian, [February 2004]

State for more than three months, these citizens must have sufficient resources so as not to become a burden for the host country's welfare system, because seeking for social assistance benefits may be considered as indication of insufficient resources and the individual could lose his/her right of residence. It is true, however, that national authorities cannot directly deny to grant non-contributory social benefits to an inactive EU citizen (article 14 par.3 of Directive 2004/38/EC) or automatically consider that a citizen who has applied or is entitled to a social assistance benefit does not have sufficient resources to enjoy the right to reside in the host country. This was confirmed by the *Brey case*¹⁸.

What is more, national authorities have to make an evaluation for each application for non-contributory benefits and special non-contributory cash benefits (SNCBs) from inactive EU citizens. This evaluation must contain a number of factors, in particular the amount of the benefit, the duration, the nature of the difficulty and the burden for the social assistance system. This approach has created a rather heavy administrative burden for national authorities, particularly when there are contained concepts such as "sufficient resources" and "unreasonable burden".¹⁹ Nevertheless, according to article 8(4) of Directive 2004/38/EC, the amount needed to consider an EU citizen self-sufficient may not be "higher than the threshold below which nationals of the host Member State become eligible for social assistance, or, where this criterion is not applicable, higher than the minimum social security pension paid by the host Member State".

In addition, although prior to *Brey*, the CJEU reassured that many articles within Directive 2004/38 are created to prevent citizens resident in a secondary Member State from becoming an "undue burden on the financial resources of their host State"²⁰, the notion of "unreasonable burden" is not clearly defined and that inactive European citizens may cause a burden for the host country, as long as this burden is not too severe. Finally, there are some restrictions referring to the inactive mobile citizens' access to non-contributory benefits only for residence less than five years. After five years, EU citizens having established a right to permanent residence can claim the host country's non-contributory benefits under the same conditions as nationals.

¹⁸ *Pensionsversicherungsanstalt v Peter Brey* Judgment of the CJEU dated 19 September 2013 (Case C-140/12).

¹⁹ Paul Minderhoud, "Access to social assistance benefits for EU citizens in another Member State" in Online Journal on Free Movement of workers within the EU, n°6, June 2013.

²⁰ Herwig Verschueren, 'Preventing 'benefit tourism' in the EU: a narrow or broad interpretation of the possibilities offered by the ECJ in *Dano*?' 52 Common Market Law Review [2015] 363.

Access to social benefits-jobseekers

When it comes to people who move within the Member States aiming to find employment (**jobseekers**), they are allowed to claim a limited right of residence but not equal access to social assistance benefits. European legislation has specific provisions for first-time jobseekers in the host country. Like all European citizens, these people enjoy a right to reside in the host country for three months. After this time, if they are not able to provide evidence that they have sufficient resources (the condition for the right of residence of inactive citizens), they may not be expelled from the country if they can prove that they continue to seek employment and that they have a chance of being accepted (article 14 par.4 (b) of Directive 2004/38/EC). This provision is based on ECJ case law which established in 1991 in its *Antonissen* judgment that a six-month period seems reasonable for EU citizens to find employment in the host country, but that following this period the citizens may not be expelled from the country if they can prove that they are still looking for a job.

As regards these citizens' access to non-contributory social assistance benefits, European legislation provides that Member States are not forced to give access for these benefits to first-time jobseekers during the period in which they are seeking employment (article 24 par.2 of Directive 2004/38).

The ECJ, however, stated in the cases of *Collins* (on the regulation of jobseekers' allowance in the UK which is based on income) and *Vatsouras and Koupatantze* (on the German basic benefit for jobseekers) that due to European citizenship, European first-time jobseekers who have acquired links with the host country's labour market enjoy the principle of equal treatment when asking for a financial benefit aiming to get access to labour market. For the Court of Justice, enjoying this benefit is not opposite to EU secondary legislation, because this benefit is not regarded as social assistance as stated in its judgment for the *Vatsouras and Koupatantze* case: "Benefits of a financial nature which, independently of their status under national law, are intended to facilitate access to the labour market cannot be regarded as constituting 'social assistance' within the meaning of Article 24 par.2 of Directive 2004/38." However, in its *Alimanovic* judgment of 2015, the ECJ banned EU jobseekers from access to social benefits granted to national jobseekers in cases where their main objective was not to gain access to the labour market but to ensure their survival. For example, in the UK, non-national EU jobseekers enjoy access to the income-based jobseekers' allowance while in Germany they cannot claim the basic benefit granted to jobseekers in order to ensure their bare minimum.

The Court of Justice finally held that, in accordance with *Dano*, the right to equal treatment in the provision of social assistance only arises under the Directive where they have fully complied with the residence requirements. It also found that the payment in question fell within the field of social assistance because it was in accordance with the definition given by Article 24(2) of Directive 2004/38, and as neither Alimanovic or her daughter had been employed for a period of twelve months or more, they were only entitled to equal treatment in the provision of the benefit for a six month period under Article 7(3)(c) and 24(1) of the Directive. Thus, the German authorities finished giving the benefit after the six months, and EU law on this matter had been formally complied with. The Court of Justice even to the point of suggesting

that the Brey proportionality test would not apply in circumstances such as this, despite the Court in Brey clearly stating that tests which create immediate consequences for access to social assistance are not corresponding with the principle of proportionality. This was justified, because although the Alimanovics' claims would not constitute an undue burden on the State, the effect of limiting Germany's power to decide in this matter would.²¹

Regarding the family of the worker, as EU citizens, his/her wife, children and grandchildren may stay in another EU country as workers, jobseekers, pensioners or students – under the same conditions that apply to him/her. If the case is different and they cannot follow him/her by using their own rights, then it is still easy for them to live together with the worker as his/her dependants. More specifically, for staying abroad for up to 3 months, as EU citizens, the spouse, children and grandchildren, may live in the new EU country under the same conditions that apply to all EU citizens. For more than 3 months, if somebody is working in an EU member state as an employee or self-employed, his/her wife/husband, dependent children and grandchildren can stay there with him/her without any other conditions. If somebody is a pensioner in another Member State, his/her dependants can stay there with him/her if he/she has for himself/herself and the whole family: a) sufficient income to live without needing support and b) comprehensive health insurance in that country. In case of somebody who is a student in a Member State, his/her family can stay there with him/her only if he/she is registered in an qualified educational institution, has adequate income for the whole family to live without needing income aid, has comprehensive health insurance for his/her whole family in the host country. Only in exceptional cases, as mentioned above, the host country can decide to deport these people for reasons of public policy or public security - but only if they represent a serious threat. For an everlasting residence, as EU citizens, they acquire the right to permanent residence if they have lived legally in the country for 5 uninterrupted years, under the same conditions as the worker. This means that they can stay there as long as they want - even if they do not work or need income support. They should enjoy the same rights, benefits and advantages as nationals.

In case of non EU family members, the situation is a little different. For staying abroad up to 3 months, all they need is a valid passport and sometimes, depending on the country they are from, an entry visa. Some EU countries require that the non-EU spouse, children and grandchildren to inform the authorities about their presence within a reasonable period of time after their arrival, and they may impose an additional penalty (for example a fine) if they do not. For staying more than 3 months, the prerequisites are the above-mentioned (for EU family members). The non-EU spouse, children and grandchildren must apply for a residence document with the authorities in the host country (often the town hall or local police station) within 3 months of arriving.

²¹Charles Edward O'Sullivan, 'Social Assistance for Economically-Inactive Citizens within the EU's 'Market State' Model', Irish Journal of European Law [2016] Volume 19, Issue 1.

The "Dano" case

On November 2014, the Court of Justice gave additional information about inactive citizens' access to social benefits in its *Dano* judgment. Mrs. Dano was a Romanian citizen who applied for job seekers benefits in Germany. She had not worked in Germany and neither was she looking for a job there.

The type of benefit she was asking for, is a 'special non - contributory benefit' under the EU regulation on social security regulation. Also, the EU citizens' Directive states that EU citizens are entitled to equal treatment when it comes to benefits on the territory of another Member State, except during their first three months of entrance, if they are job-seekers or if they are seeking student grants before five years residence. The ECJ said that these exceptions to the equal treatment rule did not apply to Mrs. Dano. However, the Court then ruled that she could nevertheless not apply the equal treatment principle, since she did not have the prerequisites in order to be covered by the citizens Directive. The Directive applies to workers, self employed persons, students and others who have sufficient resources. While Article 8 par.4 of the Directive seems to be a little more flexible as regards what might be regarded as "sufficient resources", the Court definitively ruled that Mrs Dano did not have them. Indeed, the Court ruled that the requirement in question "seeks to prevent economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence".

While previous judgments had used the equal treatment rules in the Treaties to suggest that poor EU citizens might still be able to apply for benefits, in this case, the Court ruled that this different treatment was a consequence of the EU rules that could not be avoided. Finally, the Court ruled that the EU's Charter of Fundamental Rights was not applicable, since the rules on access to special social security benefits are not included in the scope of the relevant regulation. There's the wording of the Directive, which the Court relies on to justify its ruling. The right to equal treatment in Article 24 par.1 applies to 'all Union citizens residing on the basis of the Directive'. But no such prerequisite applies to Articles 14 par.3, 15 par.1 or 15 par.3.

Earlier at the same year, the ECJ had ruled in the cases of *G* and *Onuekwere* that EU citizens who were convicted to prison in a host Member State could not count the period of their custody either towards the five-year period needed to meet the requirement for permanent residence in the host Member State or the ten year period needed to qualify for further security against expulsion.

Dano case is very important because, as we see, while the ECJ concluded that Ms Dano did not comply with the conditions of Directive 2004/38/EC to enjoy the right to reside in Germany, this citizen did enjoy access for several years to child benefits as she established her habitual residence in Germany. It is therefore possible for an EU citizen to establish habitual residence in another EU Member State and have access to universal social security benefits (such as child benefits) even when the conditions required for the right of residence are not met.

This judgment is about a clear rejection, as compared to the prior case-law, of access to benefits by those who have never worked and who are not looking for work either. In particular, in this judgment the Court disagrees with the EU legislature and accepts the limits on access to benefits set out in the EU Directive, instead of insisting (as it did

before) that any lawfully resident EU citizen can claim equal treatment when it comes to entitlement to benefits which has its roots on the Treaties.

However, it does not give a straight answer to the question what restrictions might be placed on job-seekers or ex workers' access to benefits or students' access to grants. And it does not also give any solution or any effect to the strong obligation to give equal treatment to those who are working. What is more, the ECJ insisted in the *Saint-Prix* case that it (and not the EU legislature) would still determine the meaning of 'worker', including ex-workers (as well as job-seekers, according to previous case law).

Furthermore, the judgment doesn't address the possible expulsion of persons in Mrs Dano's situation, and of course it does not give any "hint" about the prospect of denying her re-entry. As regards Article 15(1) and (3) in particular, since those who qualify for a right to reside cannot be expelled on grounds other than public policy, those provisions would have no meaning unless they applied to people who *do not* have a right to reside. Likewise, since an application for social assistance could mean that the EU citizen loses a right to reside, Article 14(3) would have little or no connection unless it applied to those without such a right.

Finally, the Court of Justice already ruled that EU law rules on expulsion protected those who did not have a right to reside under the EU free movement rules that preceded the Directive, in the *Commission v Netherlands* case. In particular, the Court ruled that: "to exclude from the benefit of those substantive and procedural safeguards [on expulsion] citizens of the Union who are not lawfully resident on the territory of the host Member State would deprive those safeguards of their essential effectiveness."²² The same thing stands here. Indeed, the rules on expulsions on grounds of public policy are also not limited to those who have a 'right to reside' under the Directive, other than Article 28 par.2, which applies only to people living somewhere in a permanent way. This wording can lead us to an opposite understanding and interpreting of the rest of the rules on expulsion.²³

²²<http://eur-lex.europa.eu>

²³Steve Peers, "In the light of the Dano judgment, when can unemployed EU citizens be expelled?" <http://eulawanalysis.blogspot.com>[2014]

Family benefits

When it comes to family benefits, in the EU, the country which is responsible for social security, including family benefits (child benefits, child-raising allowances etc) depends on the economic status of him/her who is typically the claimant of the benefit and on the country of residence- not on nationality issues.

National laws set the conditions under which parents are entitled to claim family benefits. Usually, parents are able to claim benefits in the EU country where they work, where they receive a state pension (for example old-age, invalidity or survivor's pension) or sometimes just by living there. Of course, family benefits are very different from country to country, even within Europe. (EU countries are free to establish their own rules on entitlement to benefits and services. All countries offer some family benefits but amounts and requirements differ in a very wide range).

If someone lives with all the members of his/her family in another EU country and he/she is covered by that country's social security system only, he/she will belong to his/her host country's family benefit system.

However, if he/she is staying abroad for a period of time (less than 2 years) while remaining covered by his/her home country's social security system, his/her home country will be the one paying his/her family benefits. If members of his/her family do not live in the country where he/she is insured, he/she could be entitled to family benefits from different countries.

The relevant national authorities will then take account of both parents' situations and decide which country has primary responsibility for paying the benefits. Their decision will be based on "priority rules". Priority rules are the following:

- 1) Generally, the basic and the first country responsible for providing the benefits is the country where the family's right is based according to employment factor (when someone or his/her wife/husband are employed or self-employed).
- 2) If the right depends on *employment* in both countries, the country where children live is responsible if one of the parents works there. Alternatively, it will be the country where the highest benefits are paid.
- 3) If the right depends on a *pension* in both countries, the country where children live is responsible if this country pays one of the pensions. Otherwise it will be the country where he/she was insured or have lived for a longer period of time.
- 4) If the right depends on *residence* in both countries, the country in which the children live is primarily responsible. If someone is divorced and his/her ex-wife or ex-husband receives benefits but does not use them properly (to maintain the children), he/she can contact the family benefits authority in the country where the children live and ask to have the benefits paid to him/her instead, since he/she is the person who is actually helping or even maintaining the whole family.²⁴

When it comes to pensions, in every Member State, when an individual is at the right pensionable age (this is of course defined in a different way by each country's legislation), he/she is entitled to receive a pension. Every country where someone has been insured for at least one year, will pay him an old-age pension, when he/she reaches the appropriate national age in order to be regarded entitled to receive it. For example, if someone has worked in three countries, he/she will finally receive three

²⁴www.europa.eu

separate old-age pensions. Pensions are paid no matter where someone resides within Europe and in general, all rules that apply to pensions, apply also to invalidity pensions or other kind of pensions.

Healthcare

As an EU citizen, if somebody gets sick during being abroad - whether during vacation or for a business trip or studying abroad- he/she is entitled to any medical treatment needed until he/she gets home. What is more, he/she has the same rights to health care with the nationals of the country he/she when he/she receives the medical care. When someone lives abroad, he/she has the right to receive sickness benefits in kind, e.g. healthcare and medicines, in his/her country of residence, no matter where he/she is actually insured. The individual can claim exactly the same treatment as nationals of that country. If an individual is insured in a different country than the one where he/she resides, he/she should register with the local healthcare institution of the place of residence. This is typically the case of pensioners retiring to a different country than the one that pays their pension and where they are insured. The country where someone is insured is always responsible for paying sickness, maternity or paternity benefits in cash, i.e. benefits that replace a wage that has not been received due to sickness. These benefits will be paid according to the regulations of the country where someone is insured.

In addition, for someone who is seeking healthcare abroad, it is essential that he/she always takes the European Health Insurance Card (EHIC) together on all trips abroad. This card is the legal proof that someone is insured in an EU country. If someone does not have a European Health Insurance Card (EHIC), or he/she can not use it (for instance, for private health care), the certain thing is that he/she can not be refused treatment, but he/she might have to pay for the treatment beforehand and ask for reimbursement when he/she gets back home.

In some countries the European Health Insurance Card (EHIC) is issued together with the national health card. In other countries, you need to apply for it.

About healthcare in the country where the individual lives:

- 1) If he/she receives a pension from the country where he/she lives: he/she and his/her family are covered by that country's healthcare insurance system — irrelevant if he/she also receives pensions from other countries.
- 2) If he/she does not receive a pension or any other income from the country where he/she lives: he/she belongs to the healthcare insurance system of the country where he/she was insured for the longest period of time.

Regarding healthcare in the country where someone used to work, in principle, he/she and his/her family are only fully covered in the country where he/she lives. However, if the country which is responsible for his/her pension is one of the: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Hungary, Iceland, Liechtenstein, Luxembourg, Netherlands, Poland, Slovenia, Spain, Sweden, Switzerland, the individual and his/her family are entitled to healthcare treatment in both the country which pays the pension and the country where they now live.

If someone worked for at least 2 years as a cross-border worker during the 5 years before he/she gets retired, he/she is entitled to healthcare both in his/her country of residence and in the country where he/she used to work.

Both he/she and his/her dependants are entitled to healthcare in the country where he/she previously worked if both this country and the country where he/she now lives are in this group: Austria, Belgium, France, Luxembourg, Germany, Portugal, Spain.

Social Benefit tourism-European Commission's study

In accordance with the study published by European Commission(2013), mobile EU citizens are less possible to receive benefits for disability and unemployment benefits in most countries studied. In the case of benefits in cash, such as social pensions, disability allowances and non-contributory job-seekers allowances financed by general taxation rather than contributions by the interested person (these are the special non-contributory cash benefits - SNCBs), the study showed that people who are not economically active EU mobile citizens represent a very small part of claimants and that the budgetary influence of such rights on national welfare system is very low. In fact, they constitute less than 1% of all such beneficiaries (of EU nationality) in six countries contained in the study (Austria, Bulgaria, Estonia, Greece, Malta and Portugal) and between 1% and 5% in five other countries (Germany, Finland, France, The Netherlands and Sweden).²⁵

László Andor, Commissioner for Employment, Social Affairs and Inclusion, said: "The study makes clear that the majority of mobile EU citizens move to another Member State to work and puts into perspective the dimension of the so called benefit tourism which is neither widespread nor systematic." and he also emphasized that the main function of the Commission is that everyone who works in another Member State will face the same conditions as the nationals of that Member State with no discrimination and that The Commission is coordinating with Member States in order to assist them to better apply the existing EU rules for the coordination in social security field. Furthermore, he stated that the Commission realizes that if a large wave of people from other EU countries moves for a long period of time into a specific region, many problems can be caused, especially on education, on finding houses and on the general infrastructure of the area and one solution could be the use by Member States of the European Social Fund.²⁶

On the other hand, we have to look carefully at the legal basis where the right to social security benefits derives from. Article 34 par.2 of the EU Charter of Fundamental Rights states that: "*everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.*" The EU law which matches this Charter provision, is now contained in European Parliament and Council Regulation (EC) 883/2004 ([2004] OJ L166/1) on the coordination of social security systems. This regulation came into force on 1 May 2010.²⁷ EU law in the area of social security aims mostly at the coordination of national legislation, rather than its harmonisation. This is also the reason why European Union law does not provide for uniform rules and conditions for social

²⁵Milieu Ltd, ICF GHK "A fact finding analysis on the impact on the Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence" DG Employment, Social Affairs and Inclusion via DG Justice Framework Contract. 14 October 2013 (revised on 16 December 2013)

²⁶European Commission, Employment, Social Affairs and Inclusion (ec.europa.eu) "Impact of mobile EU citizens on national social security systems" [2013]

²⁷Aidan O'Neill QC, "Benefits Tourism and EU law", eutopialaw.com [2011]

security benefits across the EU, but it requires that all Member States provide social benefits to EU nationals who “habitually reside” in that Member State. The coordination of Member States’ social security systems is a very important issue of citizens’ mobility within the EU. This coordination ensures that mobile EU citizens remain covered by a social security system and are not penalised by the loss of entitlements and rights acquired in their country of origin in the case that they decide to reside in another Member State. According to European provisions, European citizens and their dependents are covered by the social security system in the country where they work, once they start to spend money to its budgetary system through their social security contributions and taxes. However, regulations (EC) 883/2004 and 987/2009 are only related to social security benefits and special non-contributory cash benefits. Social assistance benefits (non-contributory) are regulated by the Directive 2004/38/CE. Under the equal treatment principle that derives from article 24 of this Directive, EU workers (employees or self-employed) enjoy the right to social assistance benefits under the same conditions as nationals of that Member state. And Article 4 of Regulation 883/2004 prevents Member States from imposing any additional requirements which might lead to indirect discrimination against EU nationals. For example, in *Borowitz v Landesversicherungsanstalt Westfalen* (Case C-124/99) the ECJ stated that: “conditions imposed by national law must be regarded as indirectly discriminatory where, although applicable irrespective of nationality, they affect essentially migrant workers or where the great majority of those affected are migrant workers, as well as conditions which are applicable without distinction but can more easily be satisfied by national workers than by migrant workers or where there is a risk that they may operate to the particular detriment of migrant workers ... It is otherwise only if those provisions are justified by objective considerations independent of the nationality of the workers concerned, and if they are proportionate to the legitimate aim pursued by the national law.”²⁸

²⁸Aidan O’Neill QC, “Benefits Tourism and EU law”, eutopialaw.com [2011]

The Brexit

"Brexit" is a word used for the withdrawal of United Kingdom from the European Union(it is formulated from the words"British" and "exit").This withdrawal has been characterized as a new phenomenon for the European Union,because no Member State has ever left EU before and there was no way(or it was highly controversial)to legally do this before the existence of article 50 TEU which was enacted with Lisbon Treaty.It has also been characterized as a great disaster for both the UK and the EU because of its impact for UK, for other Member States and of course for European Citizens,impact that will be remarkable in many fields especially as the years go by.There is also the fact that leaving European Union,some of the existing rights for the UK residents will be vanished.For these reasons,I want to begin this chapter with the legal basis on which a Member State can justify legally its decision to leave the European Union.The Lisbon Treaty(which amends the TEU and the TFEU),came into force in December 2009,and it was designed basically to make the EU "more democratic, more transparent and more efficient" and it was an agreement signed by the heads of state and governments of EU member states.Article 50 of the TEU provides that, if a member state decides to withdraw from the European Union ("the EU") 'in accordance with its own constitutional requirements', it should serve a notice of that intention ("a Notice"), and that the treaties which govern the EU ("the EU Treaties") "shall cease to apply" to that member state within two years thereafter.²⁹

In early 2014,the prime Minister David Cameron announced for the first time the changes he wanted to bring in the UK's relationship with EU.These were:more immigration controls,mostly for citizens of new EU member states,strictier immigration rules for present EU citizens;new powers for national parliaments collectively to veto proposed EU laws; new arrangements for the free trade and a reduction in bureaucracy for businesses; a reduce of the effect of the European Court of Human Rights on British police and courts; more power for member states, and less for the central EU; and removal of the EU notion of "ever closer union".He aimed to achieve this plan through lots of negotiations with other EU leaders and then, if he got elected again, to declare a referendum.³⁰

In May 2015,as stipulated by a Conservative Party manifesto engagement following their victory in the 2015 UK elections, the legal basis for a referendum on EU membership was set by the UK Parliament through the European Union Referendum Act 2015."Britain Stronger in Europe" was the official group in favour of UK'S remaining a member of EU, and was led by the Prime Minister David Cameron and Chancellor George Osborne."Vote Leave"was the official group voting for the UK to

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Dora Kostakopoulou,"Brexit, voice and loyalty:reflections on Article 50 TEU",European Law Review,[2016]

³⁰Tim Ross,"David Cameron: my seven targets for a new EU".The Daily Telegraph. [2014]

leave the EU, and was led by the Conservative MP Boris Johnson, Secretary of State for Justice Michael Gove and Labour MP Gisela Stuart .

A meeting took place in February 2016, in Brussels. Emphasis was given to the fact that in some Member States, the job offers are more attractive due to different remuneration rules and this leads to great flows of workers as a result of free movement of workers and of the freedom of the market in general. It was also said that the social security regimes of each country are different regarding their structure because Union law does not harmonize them but it only cares for their coordination. Thus, some measures in order to restrict the flow of workers should be taken by national and European authorities, without direct or indirect discrimination.

What is more, regarding the UK's concerns in this field, aiming to improve Union legislation and national law, it was also stated that Member States still had the right to regulate the fundamental principles of their social security systems and to have a wide range of choices to implement according to their will, especially when it comes to employment and social policies, together with the regulation of access to welfare benefits. Member States would have the power to refuse giving social benefits to people who only use their right of free movement in order to enjoy social benefits and assistance although they do not have enough resources to claim a right of residence. What is more, Member States would have the discretion to deny social assistance access to people if they do not have established a right of residence or if they have established this right, but only because of job seeking. This also contains benefits whose primary aim is to cover the most basic, survival costs, even if these benefits are also given so as to facilitate the entrance of the individual in the labour market of the host Member State. Finally, if conformed to European Union legislation, Member States can also take measures aiming at limitation of abuse of rights or fraud, such as the invoicing of documents, and measures to regulate cases of "marriages of convenience" with national or other Member States only to enjoy the free movement as a justification for continuing to live in a Member State or cases of making use of free movement as a route for omitting national law and regulations related to immigrants, applying to third country nationals.³¹

In fact, there was no fundamental change to the EU–UK relationship after the European Council Meeting. Some restrictions to in-work benefits for EU immigrants were planned, but these would apply on a scale for four years and only for new immigrants. Child benefit payments could still be made overseas, but these would be related to the expenditure somebody would have to spend for living in the other country. Regarding sovereignty, the UK was reassured that it would not be required to participate in "ever closer union"; these confirmations were "in line with existing EU law". Mr Cameron failed in his original demand to ban migrant workers from sending child benefit money back home. Payments would instead depend on the cost of living in the countries where the children live. The new rules would apply immediately for new arrivals, and for existing claimants from 2020.

The UK government had already reached an agreement on out-of-work benefits. EU migrants who had just arrived, were banned from claiming jobseeker's allowance for three months and if they would not manage to get a job within six months they would be asked to leave. EU migrant workers in the UK who lose their job, without their

³¹ *European Council Meeting, Conclusions, 18 and 19 February 2016*

fault,would be entitled to the same benefits as UK citizens, including jobseekers allowance and housing benefit, for six months.

Neither the draft deal nor the final agreement included changes to social housing right, but they were never part of Mr Cameron's basic negotiations. Cameron's demand to allow national parliaments to block proposed EU laws was amended to allow national parliaments to *collectively object* to proposed EU laws.On economic governance, anti-discrimination regulations for non-Eurozone members would be strengthened,but they would be unable to block any legislation.The final two fields covered were suggestions to "exclude from the scope of free movement rights, third country nationals who had no prior lawful residence in a Member State before marrying a Union citizen"and to make it more convenient for member states to exile EU nationals for public policy or public security reasons.The question of how many chapters of the agreement would be legally binding was controversial.No part of the agreement itself changed EU law, but some parts could be enforceable in international law.

In addition,the EU had given David Cameron a so-called "*emergency brake*", which would have allowed UK to withhold social benefits to new immigrants for the first four years after their arrival.This brake could have been applied for a period of seven years. (That offer was still on the table at the time of the Brexit referendum, but it was invalid when the vote determined that the UK would leave the EU.)Cameron claimed that "he could have avoided Brexit had European leaders let him control migration", according to the *Financial Times*.^{32 33} However, that offer had not been made by the EU, as confirmed by Angela Merkel to the German Parliament: "If you wish to have free access to the single market then you have to accept the fundamental European rights as well as obligations that come from it. This is as true for Great Britain as for anybody else."³⁴

When it comes to the single EU law test of "habitual residence", the UK social security system required all people who believed that they are entitled to Child Benefit, Child Tax Credit,State Pension Credit,Income-based Allowance for Jobseekers, Income-based Employment and Support Allowance,to have a "right to reside" in the UK. Almost all UK (and Irish) nationals automatically had such a right to reside in the UK, but other EU nationals had to meet some additional prerequisites in order for them to be able to get the benefits.Still,the principle of *equal treatment* required that EU citizens may not be treated in a different way from the nationals of a Member State. The question that arises here is if the "right of residence"condition could be regarded as indirectly discriminatory against other EU nationals(except Irish) and if the answer is yes,how could this possibly be justified. To prevent situations such as that of Ms Dano, the United Kingdom introduced a "*right-to-reside assessment*" which prefaces the habitual residence test (in order to check that the EU citizen wanting to establish habitual residence in the UK does meet the requirements governing the right of residence under Directive 2004/38/EC). The Commission characterised this test discriminatory against EU citizens and made a question to the ECJ. The Court

³²George Parker"*Cameron pins Brexit on EU failure to grant UK brake on migration*".Financial Times. London, UK. [2016]

³³Heather Stewart"*Cameron tells EU leaders they must offer UK more control over immigration*".The Guardian,[28/6/2016]

³⁴Andrew Woodcock"*Cameron warns EU immigration rules could threaten UK trade deal*".The Independent. London, UK [28/6/2016]

confirmed the United Kingdom's attitude in its judgment, stating that "there is nothing to prevent, in principle, the granting of social security benefits to Union citizens who are not economically active being made conditional upon those citizens meeting the necessary requirements for obtaining a legal right of residence in the host Member State".³⁵

The UK Government said that the "right to reside" test is a necessary and proportionate response to combat the problem of "benefits tourists" who would move to the UK from other Member States only to take advantage of the generous UK welfare payments. For example, in *Patmalniece v Secretary of State for Work and Pensions* [2011] 1 WLR 783, the UK Supreme Court confirmed the legality of making the access to "state pension credit" dependent on a "right to reside" in the United Kingdom. The right to reside in the UK test was regarded by the court to have the purpose of reassuring that only those who were economically or socially assimilated within the UK (and/or Ireland) should be able to claim benefits from the UK's social welfare system. The application of this test mainly took place because it was about time to finish the control of the UK's social security system in order for it not to be exploited by people who never contributed to its funds. The UKSC accepted that this justification was totally irrelevant to the nationality of the persons concerned and thus, there was no problem when it comes to European Union law.

Despite this fact, the European Commission disagreed, and on 29 September 2011 issued a "reasoned opinion, providing the UK two months to eradicate the "right to reside in the UK" test, and to keep only the EU law "habitual residence in the UK" test. The Commission also emphasized that the habitual residence was defined as the area where the centre of the interests and living of a person is found. Furthermore, it was regarded that the factors used to assess habitual residence were very strict and that the test was just a way for Member States to reassure that social security benefits are only received by people who have been residing habitually and genuinely and within their region.

The Daily Telegraph reported about the issue that if the ECJ would agree with the Commission, people who were financially inactive would be able to move in Member States just to receive benefits without having a real aim to work and spend money to the budgetary system of the Member State. It also referred that "*The row is the latest example of Coalition ministers appearing powerless to halt the EU overturning UK policy. Last year, a European Court judgment forced David Cameron to agree to allow prisoners the vote.*" When it comes to "the prisoner's right to vote" case – *Greens and MT v. United Kingdom* was a decision of the European Court of Human Rights and it was not related neither to ECJ, nor to EU.

But besides this, where 'non-workers' (for example, the independently wealthy or students – and their families) have exercised their EU citizenship free movement rights but have then become dependent on the social assistance system of the host Member State, Article 14 par.3 of the Citizenship (Free Movement) Directive 2004/38/EC allows expulsion as a possible option. What is more, writing in the *Daily Telegraph*, the Work and Pensions Secretary, Iain Duncan Smith has said that there had been concerns by many Member States that the Commission had made decisions depending more on ideology than on basic rules of the European Union and that this fact reassures the

³⁵Sofia Fernandes, "Access to social benefits for EU mobile citizens: "tourism" or myth?", Notre Europe, Jacques Delors Institute, policy paper 168, [2016]

general concern that EU tries to bring more fields of national competence into its own competence."³⁶

On 23th June 2016 a referendum about the membership of the UK in European Union took place (EU referendum or Brexit referendum). Those who wanted a British withdrawal from the European Union argued that the EU has a democratic shortage and that being a member of European Union, in fact weakens its national sovereignty and it reduces its competence, while those who wanted UK to remain a member of EU, argued that any loss of sovereignty was counterbalanced by the benefits of EU membership and that these benefits were undeniable. Those who wanted UK to leave the EU argued that it would allow the UK to better inspect immigration and in this way there would be less pressure on public services, housing and jobs; save billions of pounds in EU membership fees; allow the UK to make its own trade regulations and generally free the UK from EU regulations and bureaucracy so it could better organize its operation and infrastructure. Those who wanted to remain argued that leaving the EU would risk the UK's prosperity; diminish its ability to affect world affairs, put in danger national security by reducing access to common European criminal databases and create trade barriers between the UK and the EU. In particular, they argued that it would lead to job losses, delays in investment into the UK and risks to business. The non-binding referendum's result was a simple majority of 51.9% of people voting in favour of leaving the EU. The government initiated the official EU withdrawal process on 29 March 2017, which put the UK on course to complete the withdrawal process by 30 March 2019.

Following the June 2016 referendum, the Government proposed to use its powers to withdraw from the EU by serving a Notice withdrawing the UK from the EU Treaties. According to article 50 TEU, Britain is organized to leave the EU near the end of March 2019. The latest update until today, is that on 17/01/2018 the Mps said "yes" to a withdrawal bill after long debates and negotiations. The House of Commons voted by a majority of 29 to approve the EU Bill, which revokes the 1972 law that made Britain a member of the European Union and transfers about forty years of EU rules onto the British statute books. The bill is only one of a series that Prime Minister Theresa May's minority government must pass to get Britain ready for its withdrawal from the EU in March 2019.

The consequences for individuals if the UK will not guarantee their rights post-Brexit in a comprehensive and adequate way, may be devastating in many fields. In particular, family members of EU citizens will have to meet far more strict standards in order to be allowed to remain with the EU citizen of the family. Article 8 is the most relevant provision of the European Convention on Human Rights (ECHR) that could offer protection to individuals experiencing the impact of Brexit. Although it is common knowledge that keeping a family together has not been very clear under EU law, to require even more prerequisites would be overly heavy, mostly because of the risk of the EU citizen being separated from any non-EU family members. The most appropriate provision for the protection of individuals after Brexit is undoubtedly article 8 of ECHR, regarding family and private life, if it is established. Once family is established, some actions like separating parents and their children will be regarded as infringements of article 8. Such interferences would be measured by a proportionality assessment. Because of the great range of protection, art. 8 is the most appropriate for

³⁶Aidan O'Neill QC, "*Benefits Tourism and EU law*", eutopialaw.com

those who will need protection after Brexit. Moreover, another provision of the ECHR which may be related to people post-Brexit is art.14, the right to non-discrimination. Thus, the European Court of Human Rights was to also interpret the right to non-discrimination as a necessary thought when assessing any violations of art.8, then this would empower the argument that the ECHR constitutes a powerful tool for protecting individuals affected by the UK's withdrawal.

Finally, the most difficult issue regarding EU citizens, is the UK's denial of the jurisdiction of the ECJ. If this proposal becomes reality, then the ECHR and the European Court of Human Rights will have to make significant decisions in protecting EU citizens after Brexit. These concerns have to be soon under settled, otherwise great difficulties will occur.³⁷

All in all, the debate of what Brexit may bring to people's lives has not yet finished and all we have to do is wait and see what really happens in Europe this crucial period of time.

³⁷Adrienne Yong, "*Forgetting Human Rights-The Brexit Debate*", *European Human Rights Law Review*[2017] 469

Conclusions

After all this research that I did and the studying, with all these information that I found and I represented I came to some conclusions. The European Citizenship has offered many goods to mankind in general and, above all, to the European area, which offers the free movement of goods, capital, services and labor. In the area of social privileges, major and important steps have been taken and progress is evident. Emphasis has been placed on the field of health, work, family, education, with preferential social privileges commonly given to both recipients and members of their families. Although, as is natural, there are different countries from one country to another, so overall progress is very satisfactory, thus promoting social prosperity and growth within the European area.

Regarding Brexit, many consequences have already appeared and will appear also in the future. It has been a long negotiated issue, a "never ending" one. Many fields of British people lives will be affected, whether they live in UK or not. Socially, economically, nationally and general in every level, things will rapidly change. The consequences are not yet very clear because the whole procedure has not ended, thus Europe has to wait and see the results that British referendum will bring together with the consequent withdrawal from Europe.

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Appendix